COMMENTS UPON THE CALIFORNIA CHIROPRACTIC SCOPE OF PRACTICE

OUTLINE

**Notes:**

The presenters reserve the right to revise and extend the final commentary outlined here. Copies of relevant statutes, case opinions, court records, California Archive and other documents, books, and things (or relevant portions thereof) will be provided to the State Board of Chiropractic Examiners (BCE), or made available for inspection by the board members, upon submission of the formal commentary. However, eight Exhibits are attached to this outline.

The administrative record related to promulgation of the 1991 scope of practice regulation (Rule 302) is, or should be, in the possession of the BCE and will not be separately supplied as part of this proposed presentation.

This presentation is not a treatise on the history of chiropractic and many important persons and institutions are not mentioned. This is not intended to sleight their contributions to the chiropractic community.

## HISTORICAL, THEORETICAL AND PRACTICE BACKGROUND

A. CALIFORNIA CHIROPRACTIC SCOPE OF PRACTICE – 4 KEY PROVISIONS - REVIEW OF LEGISLATIVE PROCEEDINGS ON 12-6-05 AND SENATE BILL 1475 INTRODUCED 2-23-06

1) § 8 of 1913 MPA and §§ 7, 5 & 16 of the 1922 chiropractic act must be read together and in the appropriate context in order to properly interpret the provisions of the 1922 act.
   a) In that overall context, chiropractors must be recognized as having the right **to treat diseases, injuries, deformities, or other physical or mental conditions,** except by the use of allopathic drugs or surgery with a knife. (The **emphasized** language is borrowed from the definition of the drugless practitioner's scope of practice in § 8 of 1913 MPA.)
   b) On the contrary, the BCE Rule 302 presently provides that **chiropractors may only adjust the joints of the body** - any other form of treatment is limited to being **an adjunct to the adjustment**.
   c) Two primary questions were raised before the California Joint Legislative Sunset Review Committee hearing on 12-6-05.
      1. What scope of practice were chiropractors intended to have under the 1922 California Chiropractic Act?
         As asserted to the Committee, in order to answer this question it becomes necessary for the BCE to define:
         a. The theoretical/clinical models of each school of chiropractic that existed in 1922.
         b. The scientific advances presently applicable to those schools of chiropractic and the potential or actual affect of those advances on practice rights.
         c. The theoretical and clinical perspective of "medicine" and "osteopathy" in 1922.
         d. The meaning of the words "to practice" as used in conjunction with the words "medicine" and "osteopathy" in the chiropractic act.
         e. The meaning of the expression precluding chiropractors from using any "drug or medicine now or hereafter included in materia medica" in the 1922 Act.
         f. The meaning of the word "surgery" as used in the 1922 Act? and
      2. Whether amendments after 1922 were intended to grant the BCE jurisdiction to regulate the practice of new forms of diagnosis and treatment based upon emerging science and the completion of elective education and training; except as otherwise expressly limited by the terms of the 1922 Act.
2) In considering one's position relative to granting the Legislature jurisdiction to amend the chiropractic act (SB 1475) due consideration should be given to at least the following:

a) The California Legislature's prior attempts to broaden the scope of practice.
b) The comparison of the chiropractic profession's experience in California with that, for example, in Illinois where the profession has at all times been under the same regulatory structure as physicians and surgeons.

B. THE BCE HAS THE RIGHT TO RE-DEFINE THE SCOPE OF CHIROPRACTIC PRACTICE & A SUMMARY STATEMENT INTERPRETATING THE CHIROPRACTIC ACT

1) In previously adopting its various scope of practice rules (Rules 302 - from 1949 to 1991) the BCE has not considered:
   a) The entire chiropractic act as presented and approved by the voters in 1922;
   b) Prior California medical practice acts, case law and related matters as outlined herein;
   c) Section 16 of the Act which prohibits discrimination between straights and mixers.
2) The BCE considered itself bound by the *Fowler* (1938 abortion case) and *Crees* (1963) decisions in adopting the present Rule 302. Not so, because, among other things:
   a) The BCE was not properly represented by the AG"s Office in the *Crees* case.
      1. The deputy AG representing the BCE argued that the then existing scope rule (1954 Rule 302) was invalid.
      2. The AG's Office took a position in the *Crees* case contrary to its own express agreement in the *Oosterveen* (1952) case that chiropractors may "employ naturopathic methods of healing". The AG's Office was a named defendant in the *Oosterveen* case. The BCE made the same express agreement in *Oosterveen*.
         a. The AG's Office, in the *Tain* case, and purportedly on behalf of the BCE, again ignored the express agreement by that office and the BCE.
   b) The *Fowler*/*Crees* courts were not presented with, and did not consider, the entire chiropractic act or the context of the enactment of that act.
      1. *Fowler* was prosecuted for practicing medicine without a license (abortion or removing dead fetus) under section 17 of the1913 MPA (renumbered by 1938).
      2. Section 17 of the 1913 MPA was expressly modified by the 1922 chiropractic act so that chiropractors were not subject to prosecution under that section.
      3. The prosecution should have been brought as a misdemeanor under Section 15 of the chiropractic act charging Dr. Fowler with exceeding his scope of practice or he should have been charged with having performed a criminal abortion.
   c) The *Fowler/Crees* courts did not address the provision in Section 16 of the act requiring that the act be construed so as not to discriminate against "any particular school of chiropractic, or any other treatment".
   d) The *Tain* (2005) case followed the *Fowler* and *Crees* cases without looking at the substantive issues related to the construction of the chiropractic act and without considering the inadequate representation issue or the fact that the *Fowler/Crees* courts failed to consider § 16 or the entire relevant record.
      a. Nor did the *Tain* court itself consider these matters.
      b. The *Tain* court also ignored contrary precedent to the *Fowler/Crees* cases.
         1. The *Tain* (2005) court failed and refused to recognize any relationship between Sections 5 & 7 of the chiropractic act.
         2. The State Supreme Court recognize such a connetion in the *La Barre* (1924) case.
      c. The Tain court ignored the *Oosterveen* (1952) case which upheld the BCE's right to approve the right of qualified chiropractors to fully utilize naturopathic methods of treating the sick and afflicted.
      d. In 1991, the BCE did not have readily available to it the vast amount of new historical information contained in recently published books synthesizing chiropractic history. (See, Exhibit H.) This history changes the picture as to the scope of practice.

3) In re-defining the chiropractic scope of practice under the 1922 Act the BCE should conclude that chiropractors are authorized **to treat diseases, injuries, deformities or other physical or mental conditions, except by the use of allopathic drugs** (allopthic materia medica) **or surgery with a knife**.
4) Alternatively, the BCE should rule that it is entitled to recognize the opportunity for increased practice rights based upon expanding knowledge related to one or more of the chiropractic paradigms that existed prior to 1922.
5) The BCE should, among other things, adhere to holdings in the California Supreme Court *La Barre* case and in the District Court of Appeal *Oosterveen* case.

C. INTRODUCTORY BACKGROUND FOR INTERPRETING THE EXPRESSSION "PRACTICE CHIROPRACTIC AS TAUGHT IN CHIROPRACTIC SCHOOLS & COLLEGES"

**PART 1**: OPTIONS FOR REGULATING THE HEALING ARTS 1876 to 1911 and SIGNIFICANT CHANGES TO THE REGULATORY STRUCTURE IN 1913

1) A Review of Medical licensing in California from 1876 to 1911 shows that the legislature experimented with 3 basic choices for licensing the healing arts:
   a) A diploma from a legally chartered school authenticated by one of the recognized medical associations or societies - +/- examination.
   b) Recognition and approval by the examining board of one of the private associations - allopathic, eclectic, homeopathic, osteopathic and others not specifically identified.
   c) Licensing by an official state licensing board based upon education and training determined by various schools of medicine that met criteria established by the private associations.
   d) Prior to 1912, there was a general perspective that for states to prescribe minimum educational and training standards for licensure would violate due process of law.
2) The U.S. Supreme Court in the 1912 *Collins* case recognized that states have the right to prescribe the minimum education and training required for a healing arts license without denying due process of law.
3) After the *Collins* case, California abandoned the procedures identified above and made licensure contingent upon successful completion of a **prescribed curricula** and related examinations administered by an official state board.
4) A prescribed curriculum and examination has been the basic criteria for licensure to practice the healing arts at all times from 1913 to the present.
   a) Therefore, the **prescribed chiropractic curriculum** in § 5 must be correlated with the language "practice chiropractic **as taught** in chiropractic schools" in interpreting the latter expression. (See, Exhibit B, # 5 & # 1.)
      1. The *Fowler*, *Crees* and *Tain* cases rejected any connection between practice rights and prescribed education and training. This position is contrary to holdings in the *La Barre* case and:
         a. Flies in the face of the implications of the *Collins* case, and
         b. Flies in the face of the fact that California immediately changed its existing licensing structure by enacting a new statute in 1913 to thereafter base the issuance of all medical licenses upon completion of a prescribed curriculum and related examinations.
            1) Nobody involved with the 1913 MPA and the chiropractic act could have failed to recognize the obvious connection between the prescribed curricula and practice rights under such circumstances.
            2) Nor could the voters have failed to recognize the connection when looking at the ballot where the prescribed curriculum is just above the "as taught" expression. (See, Exhibit B, # 1 & # 3.)

**PART 2**: BACKGROUND HISTORY OF MEDICAL THEORIES AND PRACTICES RELEVANT TO THE CHIROPRACTIC SCOPE OF PRACTICE

1) **Virchow's 1859 Theory of Cellular Pathology - Allopathic acceptance**
   a) The term "medicine" as used in the medical practice acts, including the chiropractic act, means allopathy.
      1. Several California cases have recognized this fact and the history of the 1876 to 1911, especially 1911, makes this fact clear.
         a. Prior to 1911 the California medical practice statutes had frequently referred to the California Medical Society, the State Homeopathic Medical Society and the Eclectic Medical Society. It will be noted that the Medical Society is used without a qualifier.
         b. This results in confusion which was clarified in 1911 by designating the "medical society" as **the school or system known and designated as the regular or allopathic**" school of thought.
            1. The confusion caused by failing to identify mainstream medicine as the noted school of allopathy has intermittently caused confusion in courts across the nation.
            2. But, just identifying the school does not resolve the issue – what is that school of thought?
      2. A 1998 Memorandum of the Association of American Medical Schools acknowledges allopathy is a limited school of thought and defines allopathy as meaning to oppose disease.
         a. Part of the judicial confusion has resulted from the fact that physicians and surgeons have unlimited practice rights and therefore one is lead to conclude that their school of thought must be equally comprehensive. It is not!
      3. **The 1910 Flexner Report** also recognized mainstream medicine is allopathy and shows that allopathy is based upon Virchow's (1859) theory of cellular pathology
      4. **The Flexner report had a critical impact on medicine throughout the 20th century.**
   b) Virchow's theory follows a shift away from a prior systemic (humoral), holistic, perspective in medicine to the contention that disease starts in the independent autonomous cell.
      1. In effect, one is not sick or afflicted until there are measurable changes in cell structure, and
      2. Drugs should be developed to oppose or overcome the cellular changes.
      3. Obviously, mainstream medicine is starting to move away from this limiting paradigm but that is not the point here. The issue was what was the paradigm in 1922 and how did it differ from the theory first espoused by Claude Bernard.

2) **Claude Bernard's 1860-61 theory – Consistent with Early Chiropractic**
   a. **Bernard's theory was ignored in the Flexner Report**. The allopathic profession has also generally ignored it.
   b. Basically, Bernard asserted that disease results from a failure or interference with the **neurovascular** regulation of the **"nutritive process"** which in turn has an intimate connection with "**the leading features of inflammation**" and "**the great majority of all morbid conditions**". (See, Exhibit B.)
   c. Bernard did not develop any treatment system for remedying such regulatory dys-function, but osteopaths and chiropractors did so. Neither profession can, however, appropriately claim any priority over this basic Bernardian paradigm. (See, Section E, Part 2 – Practice Osteopathy.)

1. D.D. Palmer espoused a neurovascular theory of disease causation until around 1903 and some other chiropractic "mixers" have followed and advanced this neurovascular regulatory model since before and after 1922.
2. This basic paradigm has been expanded to include the whole extracullular compartment as a regulatory system which is often now referred to as the "living matrix". (See, Section D.)

**PART 3**: EARLY HISTORY – STRAIGHT/MIXERS & PHYSIOLIGICAL THERAPEUTICS

1) **Section 16 of the 1922 Act Prohibits Discrimination and has Been Ignored**
   a) A critical question relative to the practice rights of chiropractors is whether the term "practice chiropractic" in the 1922 act refers to all schools of chiropractic thought in use in 1922? (Answer: Yes.)
      1. Section 16 of the 1922 act commands that the act shall be construed so as to not "discriminate against any particular school of chiropractic, or any other treatment".
         a. Section 16 has been ignored thus far by the BCE and no California court has ever considered the provision in interpreting the chiropractic act.
      2. The BCE must now define the theories and clinical practices of each particular school of chiropractic that existed before 1922 in order to properly interpret the "practice chiropractic" language in Section 7 of the chiropractic act and protect the practice rights of all schools of chiropractic thought.
2) **D.D. Palmer, the Founder of Profession - Before the Straight/Mixer Division**
   a) D.D., among other things, frequently declared that his essential principle was that disease "**is the result of too much or not enough functioning.**" - **functional metabolism**.
      1. The theory of the neurovascular regulation of functional metabolism was, as indicated in Section C, Part 2, first introduced in 1861 by Claude Bernard. (See, Exhibit A.)
      2. D.D. espoused that the cause of disease is interference with the function of the neurovascular system as late as 1903
      3. D.D. founded the D.D. Palmer College of Chiropractic in Portland, Oregon in 1908 and there espoused that chiropractors should be authorized to perform both obstetrics and minor surgery. This included the use of hypodermic needles.
3) **Straight (Limited Scope) Chiropractic** – (outside & inside California)
   a) B.J Palmer and Tullis Ratledge (founder in 1911 of what is now Cleveland Chiropractic College – LA) were two early key spokespersons for this "school of chiropractic".
      1. B.J. offered a model chiropractic law for use around the country that defined chiropractic as 'the science of palpating and adjusting the articulations of the human spinal column by hand only."
      2. A similar definition of chiropractic may be found in California Assembly Bill 309 introduced in 1913 at the instigation of Dr. Ratledge.
      3. But, the primary objective of chiropractic adjustment as seen by BJ and Ratledge was to remove interference with the body's functional capacity for self-regulation which they asserted was, in effect, controlled exclusively by the nervous system.
4) **Mixer (Progressive, Broad-based) Chiropractic** (primarily outside California)
   a) D.D., in 1906, endorsed Dr. John Howard to found what became National College of Chiropractic (NCC). Howard was an early leader within the mixer tradition.
      1. His basic position was that the objective of chiropractic care was to treat the sick and afflicted by all means necessary except the use of allopathic drugs or surgery.
      2. Rather than just the joint adjustments, Howard referred to the "physiological adjustment". He defined the physiological adjustment, in part, as follows:

         "'We do not claim that it (the physiological adjustment) is a panacea for all ills nor that it is potent in all cases to the entire exclusion or depreciation of

other agencies. Our system is as broad as Nature itself, and therefore embraces all natural methods which possess virtue in assisting normal function of the body. The term Physiological Adjustment speaks for itself: **Correction of body function** by physiological methods. Chiropractic adjustment is but one phase of Nature's corrective agencies; hydrotherapy is another, Swedish movements is another, massage another; and suggestion another, and so we might enumerate all the various agencies which tend to assist nature in re-establishing normal function." He added

'orthopedical appliances, dietary considerations, **non-poisonous** botanical remedies.' (including homeopathic formulations thereof) to the practice of chiropractors.' He also asserted the 'liberty to apply whatever means appeal to our judgment as being the right one, under the various and numerous conditions met with in abnormal function of the body'" so long as that application was drugless.

5) **Physical Therapy:**
   1. Again, Dr. Howard's school of chiropractic thought is a useful starting point.
   2. Dr. Howard was, prior to 1910, teaching the use of all available physical agents, including light, sound, electricity, etc. to correct abnormal conditions, including those related to the musculoskeletal system.
   3. The U.S. Army started what they called a physical therapy department after the end of World War 1 and the first organization for physical therapists was not formed until, at the earliest, 1921.

**PART 4**: PRE-1930 HISTORY - NATUROPATHY, NEUROVASCULAR DEFICIT, REFLEX THERAPEUTICS & THEORY EXPANSION AFTER 1930s

1) **Early Connections Between Chiropractors and "Naturopathy" in California**
   a) The term "naturopathy" was first used in California by Dr. Carl Schultz just after the start of the 20th century.
      1. Schultz, from around 1909 to his death in 1934 worked closely with Charles Cale who founded LACC with his wife Linnie Cale in 1911.
      2. Schultz, along with several chiropractors, formed an association of naturopaths in 1904 and persons certified by this organization, including Charles Cale, obtained licenses to practice naturopathy under the 1909 amendment to the 1907 MPA based upon certification by this 1914 association.
         a. The naturopathic "Materia Medica" was defined by this association to include light, air, water, clay, heat, exercise, rest, non-stimulating diet, herbs, electricity, massage, Swedish Movements, suggestive therapeutics, chiro-practic, magnetism, physical and mental culture etc. etc. (This definition was accepted in the *Millsap* (1924) case and the *Oosterveen* (1952) case expressly held that chiropractors are entitled to use naturopathic methods of patient care according to this definition of the materia medica, including the "etc. etc".)
         b. Evidence shows that the etc., etc. included homeopathic remedies. (See, Section E, Part 2 – Drugs in Materia Medica.)
   b) The original Articles of Incorporation of LACC show that the school was expressly incorporated to teach, among other things "naturopathy".
      1. Over the years a whole series of chiropractic schools and colleges merged into LACC. Most of these institutions were mixer, or progressive, institutions.
      2. Keating and Phillips in their History of LACC capture the point; some chiropractors were chiropractic-naturopaths and some were naturopathic-chiropractors.

2) **Reflex Therapeutics:**
   a) As previously stated, the present chiropractic scope of practice is limited to joint manipulation and adjunctive services. The forms of treatment addressed here obviously went beyond joint manipulation and the procedures were not adjunctive to joint adjustment.
   b) **Drs. Shelby Riley and George Starr White (Zone Therapy):**
      1. Dr. Riley founded the New England College of Chiropractic in 1913.
      2. White was the Honorary Dean of LACC from 1921-1924.
      3. Dr. Riley wrote a texbook on chiropractic and one on "zone therapy:
         a. Zone therapy described "'ten invisible electrical currents through the body!" and referenced five zones – example: "First Zone – From the tip of the thumb, straight up to the top of he (sic) head and down through the nostril to the big toe."
         b. Riley asserted that this "First" zone regulates the functions of the "nasal, palate, glands, esophagus, stomach, uterus, bladder, (and) vagina." (Obviously, the treatment system is not, then, directed to just joint subluxations.)
            1) Riley correlated zone therapy with both the nervous system and Chinese medicine as did George Starr White who lectured about zone therapy around the country.
   c) **Terrence Bennett & Ralph Martin (Neurovascular Dyamics)**:
      1. Terrence Bennett, D.C. practiced in California prior to 1922.
         a. After Bennett's death, his theory and therapeutic practices were taught by Dr. Ralph Martin who taught this form of practice at LACC up to the 1970s. Dr. Martin was a co-founder of the ACA Council on Diagnosis and Internal Disorders.
      2. Bennett defined the objective of neurovascular dynamics as concerned with the processes of restoring and maintaining the efficiency of the neurovascular system.
      3. He emphasized that "the patient is not a low back pain, a gall-bladder or and indigestion type, but is a complete body and not just a part.
      4. Bennett identified points of the body that can be used to alter body function. His treatment involves slight pressure and activation of the stretch reflex. His points are still used in Applied Kinesiology founded by George Goodhart, D.C..
      5. The objective was to affect organ dysfunction reflexively through the points on the torso to which organ dys-function is reflexively associated.
         **a. The objective was obviously not limited to joint dysfunction as required by Rule 302.**
      6. Bennett based his work on a deep understanding of physiology and on, among other things, Chinese medical theory and zone therapy.
      7. Neurovascular dynamics establishes an obvious connection with the theory of neurovascular regulation of tissue function first espoused by Bernard as a counter measure to Virchow's theory of cellular pathology.
         a. Bennett taught, and Martin memorialized in his publication of Bennett's lecture notes, that:

            "As we go further with this vasomotor nervous system we find that these two divisions of the vasomotor nervous system (one to deliver everything to the arteriole) the capillaries then delivering everything, the blood and all of its saturates to the tissue space. If there is a unit of physiology, this is it. This we term the 'effector mechansism".
            …. **So the arteriole, the capillary, the tissue space, the cell, the lymph capillary, which also lies in this same area, and we have a functional unit which is common to all tissue in the body."**

b. This definition of a functional unit is almost identical with Pischinger's model addressed below which is followed by practitioners of functional medicine in Europe. Again, this is clearly not limited to adjustment of the joints and adjunctive services.

D. ADVANCES IN SCIENTIFIC SUPPORT FOR THE CONCEPT OF THE BODY'S INNATE CAPACITY TO REGULATE & HEAL ITSELF – LIVING MATRIX - FUNCTIONAL UNIT

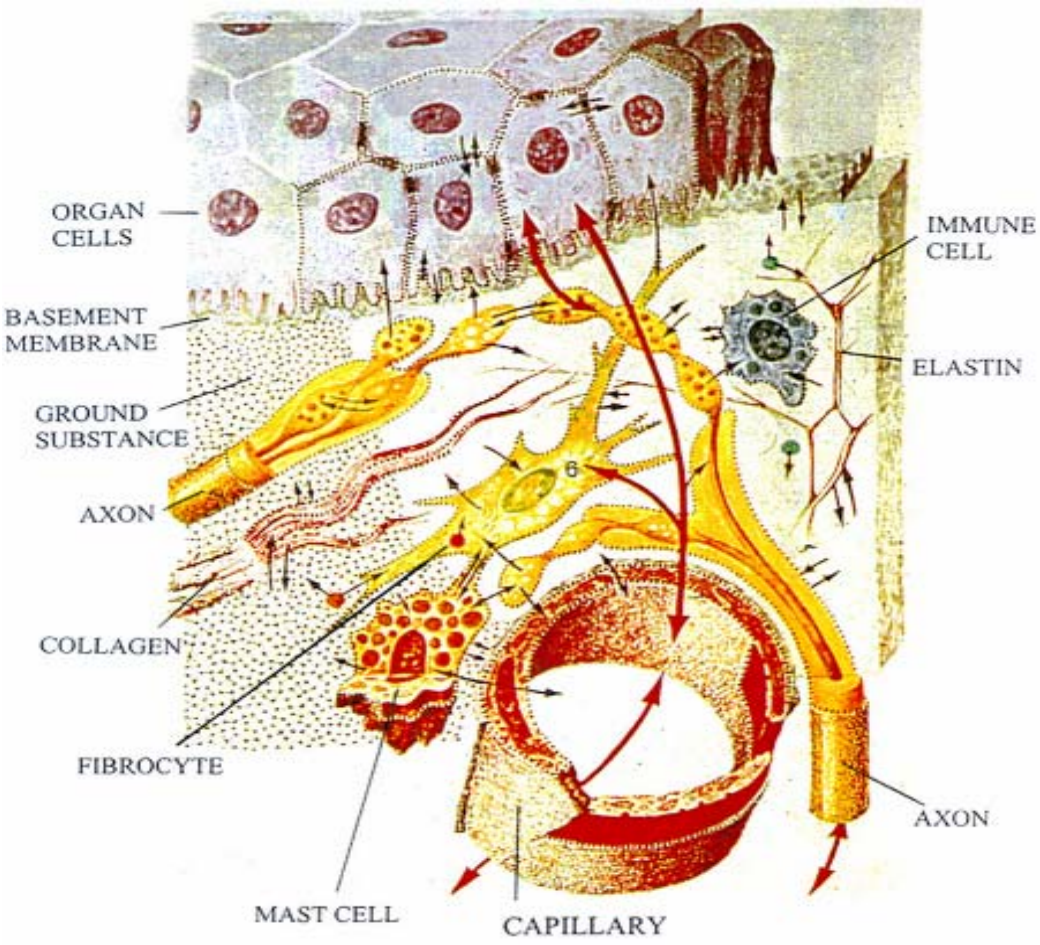
1) Even the *Crees* (1963) court recognized that "**chiropractic is not a static system of healing and it may advance and change in technique, teaching, learning, and mode of treatment ….**"
   a) However, the right to incorporate new scientific knowledge may not authorize practices expressly prohibited by the provisions of Section 7 of the act - the use of allopathic drugs or surgery with a knife. (See, Section F.)
2) The focus in this section will be on the scientific advances in the understanding of the basic neurovascular pathophysiology (regulatory) model first advanced by Claude Bernard. As outlined in Section C, Part 4, this model was significantly advanced by the work of Riley and Starr, and the "functional unit" concept developed by Bennett/Martin.
   a) This focus is definitely not intended to suggest that other advances in the treatment of human diseases, injuries, deformities, or other physical or mental conditions with the use of neutraceuticals, Western phyotherapeutics, etc., are not also relevant to the BCE's ultimate consideration of the scope of practice issues.
   b) They are, but the focus here is on the preliminary question as to whether the scope of practice is limited to joint manipulation and adjunctive services, and
   c) The right to use neutraceuticals and herbs, etc. is consistent with the present scope of practice rule so long as that use is limited to being an adjunct to the adjustment.
   d) But, the phenomena addressed in Parts 1 and 2 below clearly demand treatment methods that go beyond joint adjustment and adjunctive services.

**PART 1**: SCIENTIFIC ADVANCES IN UNDERSTANDING THE BODY'S INNATE MECHANISM(S) OF SELF-REGULATION - THE LIVING MATRIX

1) **The Pischinger matrix model (1950s and after)**:
   a) Dr. Pischinger was a professor of medicine at the University of Vienna Medical School. His basic theory was that:

      "Strictly speaking, the cell concept is only a morphological abstraction. Seen biologically, it cannot be accepted without the **vital environment** of the cell."

      1. He deemed the cell and the whole extracellular, connective tissue, matrix to be a "functional unit" that serves as the body's built-in regulatory system. A picture is worth a thousand words and an adaptation of Pischinger's basic "functional unit" is shown below. The picture speaks for itself, but looking at the arrows it will be noted that all parts are communicating with each other towards, borrowing from Bernard, creating a dynamic "harmony between the parts of the living frame".




2. Pischinger's model has become the primary basis for the development of a holistic clinical practice in Europe that is, appropriately, referred to as "**functional or biological medicine**".
    a. This model correlates with the definition of the "functional unit" central to the neurovascular dynamic theory and practice of Drs. Bennett and Martin. (See, Section C, Part 4 – Reflex Therapeutics.)

2) **Oschman's Synthesis – The Body's Capacity for Self-Regulation (The "Living Matrix"):**
    a) James Oschman, Ph.D., has synthesized the information emerging about the body's capacity to regulate and heal itself.
        1. His primary position is that the body is maintained in dynamic regulation by a functional unit that he calls the living matrix. He states:

        "The Living Matrix is simultaneously a mechanical, vibrational, energetic, photonic, and informational network. The entire composite of physiological and regulatory processes we refer to as the living state takes place within the **context** of a **continuously interconnected living matrix**."

        2. The living matrix is a structural continuum that extends even into the cell nucleus.
        3. Modern biophysical research shows that the living matrix

        "has a wide range of properties that enable the body to use sound, light, electricity, magnetic fields, heat, elasticity, and other forms of vibrations as

signals for integrating and coordinating diverse physiological activities, including those involved in tissue repair …."

4. In addition, and specifically important to the chiropractic scope of practice, Oschman demonstrates, among other things:
   a. That some of the bio-communication that takes place within the matrix occurs too rapidly to be the product of only the action potential of the nerves.
   b. That some of the components of the matrix act as semi-conductor tissues. That is, they have the capacity to both convey **information** (as in a telephone line) **or energy** (as in the cord of a toaster).
   c. That the living matrix is a communication system in which "organized (or structured) water molecules" surround all components of the system and act as a regulating and "proton-conducting system".

3) To repeat, this basic science is consistent with the basic tenets of the school of chiropractic espoused by D.D. Palmer prior to 1903 and with the models espoused by, among others, Dr. Howard, Drs. Charles and Linnie Cale, Dr. George Starr Wood, Dr. Riley, and Drs. Bennett and Martin.
   a) Therefore, this science should, and indeed arguably must be incorporated into the present scope of practice of California chiropractors as will be more specifically addressed in Section F. **One cannot incorporate this, or other available basic and clinical, science into the chiropractic model under the present version of Rule 302.**

**PART 2**: THE LIVING MATRIX – DIAGNOSTIC AND TREATMENT OPPORTUNITIES CONSISTENT WITH EARLY CHIROPRACTIC PRACTICE

1) **Living Matrix Diagnostic and Assessment Tools**:
   a) The work of Pischinger has shown that the matrix tissue runs generally parallel, but somewhat deep, to the surface of the skin except at certain specific points around the body.
      1. In 1987, Heine "discovered that '**neurovascular bundles'"** (Heine cylinders) penetrate the superficial fascia at certain point locations around the body.
         a. The cylinder containing the "neurovacular bundles" also includes all components of the whole extracellular matrix tissue – the living matrix.
         b. Many of these cylinders coincide with Bennett points and acupuncture points.
         c. European practitioners of "functional medicine" consider the cylinders (points) to be windows to the whole living matrix that can be used for diagnostic and therapeutic purposes; as did, among others, Bennett and Martin.
2) **Four categories of diagnostic equipment related to assessment of the living matrix:**
   a) Electroacupuncture According to Voll (EAV) measures changes in the electronic status living matrix. (This is often referred to as electrodermal screening in the United States.)
   b) Biological Terrain Assessment Instrumentation assesses the acid-alkaline balance (pH), the oxygen carrying capacity and stored minerals within the matrix.
   c) Thermographic Point Assessment (CRT) of the Heine cylinder points shows thermal alteration with disturbed function of organs related to particular point locations.
   c) Heart-Rate Variability Assessment analysis is based on measuring variability in heart rate under varying states of induced stress. Delayed response to induced stressors shows diminished recuperative power and is considered a sign of "matrix rigidity".
3) **Living Matrix Treatment:**
   a) Neurovascular Dynamics - the system started by Bennett and Martin.
   b) Matrix Regeneration Therapy loosens and helps remove toxins that have become stored within the living matrix.

c) Living Systems Information Therapy identifies abnormal resonance factors within the matrix and then produces counter-resonance factors to modulate the functional disturbance.
d) Resonance (Clinical) Homeopathy focuses on the use of homeopathic remedies in conjunction with the EAV diagnostic equipment referred to above and other means, including other monitoring devices and the techniques of Applied Kinesiology.
e) Neural Therapy refers to a form of treatment which uses the body's own neurovegetative (autonomic) system by supplying energy to damaged tissues or by removing energy blockages within the living matrix.
    1. This practice has been in continuous use since prior to 1922 in Europe and Russia.
    2. Although the practice is still designated as "neural therapy" it is now recognized that the whole living matrix is involved and being affected by this form of treatment.
    3. Trigger point injections are recognized in Europe as falling within this category of practice.
    4. Most practitioners utilize lidocaine or procaine for neural therapy, but it has been shown that saline solution works as well for trigger points and probably would do so with other forms of this practice.
        a. One could hypothesize that other forms of natural medicines, including homeopathics and substances already part of the matrix, (e.g. – hylauronic acid) would work as well as, or perhaps even better than local anesthetics.

## ANALYSIS OF THE 1922 CHIROPRACTIC ACT AND SUBSEQUENT AMENDMENTS

E. ANALYSIS OF THE SCOPE OF CHIROPRACTIC PRACTICE **UNDER THE 1922 ACT**

**Additional Preliminary Background:**

**1) Key Aspects of the Licensing Struggle in the Era from 1913 to 1922.**
a. The 1913 MPA has been the basic conceptual model for the licensing of all healing arts practitioners from 1913 to the present.
    1. The model is based upon completion of a curriculum prescribed **by the state** and examinations over the subject areas so prescribed.
    2. In 1913 these processes were to be administered by a single medical board appointed by the Governor, without input from the respective schools of medicine.
b. Chiropractors and osteopaths both resisted regulation under the allopathically dominated "medical board" as each profession deemed that board to be discriminating against their respective professions.
    1. **Straight chiropractors also sought to avoid having to complete the type of education prescribed for the drugless practitioner's license under the 1913 MPA**.
    2. **However**, as stated in the ballot arguments on the 1922 ballot, "**Many chiropractors have taken and passed the examination (under the medical board) and are are (sic) now legally licensed and practicing in California.**" (See, Exhibit B, # 8.)
c. In each bi-annual legislative session of the years 1915 to 1921 efforts were made by the straights and the mixers to get their own chosen form of licensing law. They were all unsuccessful, as was a ballot measure in 1921.
d. B.J. Palmer, the leading spokesperson for straight chiropractic, sided with Ratledge and the straight faction until 1919. In that year he shifted his allegiance to the mixer Charles Cale - the founder of LACC in 1911.

1. This resulted in a cooperative effort between the straights and mixers as to the initiative measure in 1922. The wording of the initative was clearly designed to protect the practice rights of both the straights and the mixers.
2. This was accomplished, among other things, by an express prohibition against the act being construed so as to "discriminate against any particular school of chiropractic, or any other treatment." (See, Exhibit B, # 9)
    a. The wording of the present Rule 302 is inconsistent with this mandate and no court has ever considered § 16 in interpreting the act.

e. Two critical practice rights cases were decided in 1915 and 1916.
    1. One of these cases will be addressed here and the second case will be addressed in Part 2 dealing with the "**surgery**" issue.
        a. Dr. Ratledge was charged with practicing medicine without a license and his case ended up in the California Supreme Court in 1916.
        b. Ratledge argued that persons seeking to "alleviate human suffering by manual and **mechanical** means only" did not need the education **prescribed** for the license to practice as a drugless practitioner under the 1913 MPA.
        c. Further, he argued that to require chiropractors to complete such **prescribed** education was unfair; a denial of due process of law.
        d. The State Supreme Court expressly relied on the holding in the 1912 U.S Supreme Court *Collins* case and ruled that:

> "there is nothing unreasonable in the curriculum prescribed by the Medical Practice Act for those wishing to practice the art of drugless healing."

        d. The *Ratledge* case firmly established that the state was going to continue following the 1913 MPA model and would thereafter require all healing arts practitioners to complete a prescribed curriculum that was directly, and reasonably, related to the practice rights to be granted them.
            1. This means that in analyzing the 1922 act one must, as the drafters of the 1922 ballot measure did, start by considering the terms and provisions of the 1913 MPA.
            2. The osteopaths put an initiative measure on the same ballot as the chiropractors and it is very instructive to see how the osteopaths structured their initiative measure.

**2) Osteopathic and Chiropractic Licensing Laws – Some Critical Similarities & Differences**.

a) Between 1913 and 1922, new osteopathic graduates were limited to being licensed as drugless practitioners. (It is important to note that the osteopaths and the chiropractors jointly promoted their respective 1922 initiatives. See, e.g., Exhibit C.)
    1. The osteopathic measure and the chiropractic initiative each set forth sections setting up the structure and administration of the respective boards**. Each also incorporated provisions of the 1913 MPA**. **But, they did so very differently**.
        a. The osteopaths simply made all provisions (including the respective curricula) of the 1913 MPA applicable to graduates of osteopathic schools and provided that such graduates were to be examined and regulated (as either a physician and surgeon **or** drugless practitioner) by the Osteopathic Medical Board.
        (See the underlined portions of the osteopathic ballot measure (Exhibit D) and the quotation of the provisions of the 1913 MPA starting on page numbered "One hundred eight" of their initiative measure.)

b) On the other hand, **chiropractors made some of the provisions of the 1913 MPA applicable to chiropractors, specifically modified other provisions and repealed provisions of the 1913 MPA inconsistent with the chiropractic act**. (See Exhibit B, the provisions marked #4 and #5.)
   1. **The 13 modified sections** of the 1913 MPA applicable to **chiropractors have never been published** in the California statutes. (The whole part of the ballot measure following Sec. 19 on the ballot - see, Exhibit B, at # 4 & # 5 and following thereafter.)
      a. **Neither the BCE nor any court has ever considered these modified provisions in interpreting the Act; or the 1913 MPA itself**.
      b. One cannot properly understand or interpret the original intent of the 1922 act without considering the entire 1913 MPA, including the 13 modified provisions; among other things.
   2. As with the chiropractic act, the provisions of the 1913 MPA were not re-published in the statutes relating to the osteopaths. But, the underlined language on that statute (Exhibit D, page "One hundred seven") made it abundantly clear that one had to look at the 1913 MPA in order to administer the osteopathic act and that has always been done as to osteopaths. Again, but not as to chiropractors.

3) **Some Critically Important Provisions of §§ 8 & 11 of the 1913 MPA**
   a) Section 8 of the 1913 MPA act defined the basic practice right of **both** physicians and surgeons and drugless practitioners as the right to treat **"diseases, injuries, deformities, or other physical or mental conditions…."** (Exhibit E, § 8.)
      1. Section 8 of the 1913 MPA was **not** one of the sections modified by the 1922 chiropractic act. (Exhibit B, # 5 and Exhibit E, § 8.)
      2. To repeat, osteopaths were granted this same basic practice right under their 1922 initiative act – as either a physician and surgeon or as a drugless practitioner.
         a. No limitations were placed on the physician and surgeon licensees.
         b. Limitations were placed on the practice rights of drugless practitioners.

**PART 1:** ANALYSIS OF THE PRIMARY (BASIC) CHIROPRACTIC PRACTICE RIGHT

ALTERNATIVE ONE**: Chiropractors were Granted the Same Basic Practice Right as Drugless Practitioners under the 1913 MPA & the 1922 Osteopathic Act**

1) The analysis in this part will conclude that chiropractors were intended to have the same practice right as drugless practitioners under either the medical or osteopathic board. Indeed, the same basic right was also granted to physicians and surgeons under either board: the right to treat diseases, injuries, deformities, or other physical or mental conditions.
   a. Of course, the physicians and surgeons had an unlimited license whereas the license of drugless practitioners was expressly limited, as is the license of chiropractors. (See, Part 2 hereof.)
2) The analysis of the basic (primary) practice right must start by considering § 7 of the chiropractic act together with the **prescribed curriculum** in § 5:
   a) The "as taught" language in § 7 may mean one of three things:
      1. The practice must be "chiropractic" **and** it must be taught in chiropractic schools.
         a. Obviously, this re-writes the language of Section 7, but it was the interpretation used by the *Fowler/Crees* courts and the *Fowler/Crees* decisions have been held to be binding precedent by subsequent courts, including the *Tain* court.
         b. Without taking any evidence as to what chiropractic was before 1922, these two courts used a dictionary definition that only included joint adjustment.

c. The courts were concerned that if they did not re-write the act chiropractic schools would have unlimited power to re-define the rights of chiropractors.
d. The courts were wrong on both counts as shown herein.

2. Chiropractors may do anything they are **actually taught** in chiropractic school.
   a. This cannot be the case for four reasons:
      1) This would put the schools back in charge of defining the practice rights as had been tried in medical practice acts prior to 1913;
      2) It would defeat the whole purpose of the repeal of the pre-1913 practice acts so that the practice rights issues would become primarily a state function based upon prescribed curricula;
      3) The safety of the public could be in jeopardy pending action to limit the practice rights created by the schools but without necessarily having duly considered the public interest. (It is the BCE's function to protect the public.)
      4) It would clearly create an on-going issue about the rights purportedly being created by school action and the specific limitations stated in § 7 of the act.
3. The language means as **prescribed** to be taught and that conclusion becomes abundantly clear by looking at the ballot measure presented and approved by the voters in 1922.
   a. The "as taught" language is shown at # 1 on Exhibit B and the prescribed curriculum is directly above the as taught language at location # 3.
   b. The "as taught" language also appears in Section 6(c) at location # 2.
   c. No person looking at these provisions could reasonably escape the conclusion that the "as taught" language means as **prescribed** to be taught by Section 5 of the act.
      1) Neither the *Fowler* nor the *Crees* courts were asked to look at the ballot (attached as Exhibit B) and the *Tain* court did not consider it even though asked to do so. (The ballot was attached as an exhibit to the complaint.)
      2) The record relative to the promulgation of the 1991 version of Rule 302 shows that the BCE did not consider the ballot measure itself and also failed to make the connection between the prescribed curriculum and the "as taught" language.
      3) The *Crees* and *Tain* courts held that the prescribed curriculum bears no relationship to the "practice chiropractic as taught" provision in Section 7.
         a. The *Crees* and *Tain* courts are intermediate level courts and their jurisdiction is inferior to that of the State Supreme Court.
         b. The State Supreme Court in the *La Barre* (1924) case, made several points that must presently control and otherwise direct the BCE's consideration of the scope of practice issues:

> "Sections 5, 6, 7, 8, 9, and 10 deal with the schedule of minimum educational requirements established by the act and also with the examination of applicants for license thereunder. These sections are confined solely to the issuance of licenses to practice *chiropractic* under the *provisions of the initiative act.* (Italics in original.)
>
> ….
>
> It will be observed that a license issued under the initiative or chiropractic act confers a higher mark of learning and efficiency upon its holder than does a drugless practitioner's certificate issued under the Medical Practice Act. The minimum educational requirements of the chiropractic or initiative act calls for a course of study embracing the same subjects as the Medical Act, but it

> extends over a period of two thousand four hundred hours as against two thousand hours for the drugless practitioner."
> ….
> "The (Chiropractic) act is intended to accomplish the same object that all general health laws are designed to accomplish. It is undoubtedly *in pari materia* with all other acts regulating the same general subject." (Ibid., p. 391.)

c. The expression *in pari materia* means that all the laws referred to in Section C, Part 1 must be read together with the 1913 MPA and the 1922 chiropractic act in interpreting the latter act.

3) Reading § 7 and § 5 together does not fully resolve the scope issues.
   a) It is necessary to also look at:
      1. The prescribed curriculum for the drugless practitioners license (See, Exhibit E, § 10 which was also shown on the 1922 chiropractic ballot – Exhibit B, # 6.); and
      2. The drugless practitioner's scope of practice (See, Exhibit E, § 8.);
      3. Additional supporting information on the 1922 ballot.

**Comparing the Drugless Practitioner Curriculum with the Chiropractic Curriculum**:

| (MD/DO - 1913 MPA) Drugless Practitioners: | | (1922 Chiropractic Act) Chiropractors: | |
|---|---|---|---|
| Course | Hours | Course | Hours |
| Hygiene | 60 | Hygiene & Sanitation | 100 |
| Manipulative & mechanical therapy | 260 | Chiropractic Theory & practice | 500 |
| Ob-Gyn | 265 | Ob-Gyn | 100 |
| Total | 2000 | | 2400 |

1. Although drugless practitioners under the 1913 MPA took a course named "Hygiene" they were examined on "hygiene and sanitation". (See, Exhibit E, Section 11.)
   a. Obviously, clarification was needed and that was done, in part, by re-naming the chiropractic course Hygiene and sanitation. (The drugless practitioner's curriculum is listed on the chiropractic ballot, Exhibit B, § 6.)
2. Mechanical therapy is not listed as a chiropractic course and the fact that chiropractic includes mechanical care is not clear on the face of the statute.
3. Both of these issues were therefore clarified by the provision in § 7 which expressly provides that chiropractors "may use all necessary mechanical, and hygienic measures incident to the care of the body".
4. Although chiropractors are not expressly prohibited from performing obstetrics by any express provision of the 1922 act, the voters were told that chiropractors would not do obstetrics in the ballot arguments. (Exhibit b, # 11.)
   a. There is an obvious reason for this. Chiropractors had 165 hours less education and training in this area than the drugless practitioners, or, for that matter, the physicians and surgeons. (See, Exhibit F.)
   b. The ballot argument is persuasive on this point as it is on other points addressed in this outline.

c. We will leave open the questions as to whether the BCE could, or should, establish standards for chiropractors to elect to qualify in this area by meeting reasonable contemporary standards for natural childbirthing. (See, Section F.)

**The drugless practitioner's scope of practice:**

1. Section 8 is not made one of the 13 sections of the 1913 MPA expressly modified by the terms and provisions of the 1922 act. (See, Exhibit B, 3 # 5 – the list of modified sections jumps from number seven to number nine.)
   a. The chiropractic act only repealed provisions of the 1913 MPA that were inconsistent with provisions of the 1922 act. (Exhibit B, # 4.)
   b. **There is nothing inconsistent with granting chiropractors the same basic practice right as drugless practitioners under the 1913 MPA**. (whether licensed by the Medical Board or the Osteopathic Medical Board)
   c. Therefore, the expression "practice chiropractic as taught in chiropractic schools and colleges" (rather than just practice chiropractic) meant to grant chiropractors the same basic practice right as drugless practitioners.

2 Again, the basic practice right of the drugless practitioners was the right to "**treat diseases, injuries, deformities, or other physical or mental conditions",** except as otherwise expressly limited.

**Additional Supporting Data From the Ballot Measure Itself:**

1. In addition to the whole background information provided in Sections C and D hereof, there are, on the ballot itself, additional points supporting the conclusion that chiropractors were meant to have the same basic practice right as drugless practitioners.
   a. The ballot argument opposing passage of the measure stated, among other things:
      1) "Chiropractors and osteopaths constitute only two of the twenty-seven drugless cults in California." (See, Exhibit B, # 12.)
         a) If that was true, any member of the supposed "cults" could become licensed as a drugless practitioner and practice with the scope of practice stated in Section 8 of the 1913 MPA.
         b) They would not, however, have the right to hold themselves out, or "palm themselves off", as anything other than a drugless practitioner or as a member of their named healing art.
      2) "Many chiropractors have taken and passed the examination and are are (sic) now practicing in California." (See, Exhibit B, # 8.)
         a) Obviously, if Rule 302 is a correct construction of the 1922 act, these chiropractors would have given up rights they had acquired by their prior license in order to practice as a chiropractor.
         b) If so, the previously quoted vision of the new profession in the *La Barre* case, to the effect that chiropractors would find it advantageous to become licensed under the new board, would be totally in error.
      3) "California already has a competent Board of Examiners created by law, charged with the duty of determining, by impartial examination, the qualifications **of all applicants, including chiropractors, who desire to treat diseases, injuries, deformities, physical or mental afflictions of human beings.**" (Emphasis added.)
         a) Obviously, the author of this argument thought he had defined the expected scope of practice for the new licensees.
         **b)** More importantly, so too would the voters who read this argument and then voted the chiropractic measure into law.

ALTERNATIVE TWO: **Chiropractors May Treat Human Diseases, Injuries, Deformities, or Other Physical or Mental Conditions by All Means Within the Theories & Practices of Chiropractic in the 1922 Era**

1) In "Alternative One" the scope of practice analysis is based on the proposition that chiropractors were intended to have the same **basic** practice right as drugless practitioners under the 1913 MPA and the 1922 osteopathic act.
   a) This analysis is set forth as the primary analysis because it is the most reasonable interpretation of the 1922 chiropractic act in the historical, statutory, and theoretical construct context of the 1922 act as outlined in Sections A through C hereof.
2) Here, the key point is that chiropractors may treat the sick and afflicted by any and all means that were used by any "school of chiropractic" in existence before the 1922 era.
   a) Rule 302 limits the chiropractic treatment to the technique of adjustment rather than a scientific, empirical and clinical model of care.
      1. The net effect of this is that chiropractors are limited to treating joint dysfunction.
3) The "physiological therapeutic", "naturopathic"and "reflex therapeutics" traditions outlined herein as part of the mixer, or progressive, school of chiropractic are completely negated in the model of care established by Rule 302.[1]
   a) The "mixer" schools of thought included all "natural means" for treating the sick or afflicted but did not include the use of allopathic drugs or surgery. Indeed, some of those practitioners, including D.D. Palmer, included minor surgery within their scope of practice.
      1. This does not mean that the word "surgery" can be construed to presently include such a right for California chiropractors as discussed in Part 2, below.
   b) The present Rule 302 must therefore be found inconsistent with the intent of the voters to authorize chiropractors to treat the sick and afflicted by all those natural means they were then aware that chiropractors used in patient care.
   c) In addition, the negation of the right of chiropractors to practice within the mixer tradition violates the specific prohibition against the chiropractic act being interpreted in such a way as to "discriminate against any particular school of chiropractic, of any other treatment". (See, Exhibit B, # 9.)
      1. This does not, however, necessarily mean that chiropractors are presently adequately trained to fully practice within this broader perspective.
      2. Obviously, the limitations placed upon the scope of chiropractic practice have impacted the manner in which chiropractors are presently educated and trained.
4) Therefore, even if the BCE was to conclude that the analysis outlined in Part 1 should not be accepted, the basic practice right of chiropractors must include the treatment of the sick and afflicted by all means necessary except as otherwise expressly limited by the provisions in Section 7.
   **a)** This analysis also compliments and further supports the conclusions developed in Part 1. (See also, Section F, below for a analysis of the complimentary concept that the chiropractic profession has the right to advance its practice parameters based upon expanding scientific and clinic knowledge.)

[1] In this context, attention should be given to the definition of naturopathy in the new (2003) "Naturopathic Doctors Act" (Bus. & Prof. Code, sections 3613 et. seq.): "'Naturopathic medicine' means a distinct and comprehensive system of primary health care practiced by a naturopathic doctor for the diagnosis, treatment, and prevention of human health conditions, injuries, and disease."

**PART 2**: THE EXCEPTIONS TO THE PRACTICE RIGHTS OF CHIROPRACTORS ARE SPECIFIC AND LIMITED IN NATURE

**General Comment on Words "Medicine", "Osteopathy", "Surgery" & "Drugs" in § 7:**

1) Section 11 of the 1913 MPA allowed drugless practitioners to become licensed as physicians and surgeons by completing the additional 2000 hours prescribed education and training and then taking a new examination over only the new material. (See, Exhibit E, § 11, under "Exceptions".)
   a) Under the 1913 MPA this right to shift licenses was, of course, limited to persons licensed as drugless practitioners under the medical board. Osteopaths licensed after 1922 had this same right.
   b) The "new examination" covered, among other things, "general medicine", "surgery" and "materia medica". (See, Exhibit E, § 11, under "Exceptions".)
   c) Those drugless practitioners making this shift would, obviously, have had the right to practice medicine by the use of drugs and surgery - allopathy.
   d) The right to shift licenses was not granted to chiropractors and the language in § 11 allowing for drugless practitioners to shift licenses is shown as deleted and replaced with asterisks **. (See, Exhibit B, # 7.)
      1. The elimination of this right as to chiropractors by merely replacing the granting clause with asterisks needed additional clarification.
         a) The medical establishment would have wanted further clarification.
         b) So too, would the chiropractic community as most chiropractors did not want to practice allopathic medicine by using drugs or surgery.
         c) The prohibitions in section 7 precluding chiropractors from practicing medicine, osteopathy, surgery or using the drugs in materia medica is, at least in significant part, related to this needed clarification
            1) These points are applicable to each of the stated limitations addressed below.

**Chiropractors Shall Not be Authorized to Practice Medicine:**

1) The "general comment" at the start of this Part 2 is incorporated herein by this reference.
2) The word "medicine" as used in the medical practice acts from 1876 to 1909 was always used in its generic form when referring to the California Medical Society; without any specific modifier.
   a) The first medical practice act in 1876 provided for licensure through the agency of the California Medical Society and did not provided for licensure through other schools of practice. This resulted in the 1878 amendment and then a new act in 1901.
   b) The 1901 practice act, for the first time, established an official, nine-member, State Examining (licensing) Board.
      1. Five members of this Board were appointed by the "Medical Society of California", two by the "State Homeopathic Medical Society", and two by the "Eclectic Medical Society".
      2. In 1907 this was changed and the Governor was granted the authority to appoint an eleven-member state Board from a list supplied by the societies designated in (1), plus two members from a list supplied by the Osteopathic Association of the State of California.
      3. The reference to the unmodified term "Medical Society of California" was clarified in the 1911 medical practice act which refers to the 5 members from that society by stating "**Five members from the school or system known and designated as the regular or allopathic**" school of thought.
         a. The California courts have frequently recognized that the use of the word "medicine" without an additional modifier, or clarification, is referring to

"allopathic medicine". They have not, however, defined that school of medical thought.

b. Therefore, the explanation of allopathy based upon "opposing symptoms" and Virchow's theory of cellular pathology, and the comparison with Bernard's neurovascular, regulatory, concept of medicine outlined in Section C, Part 2 and as further outlined in Parts 3 and 4 and in Section D, Parts 1 and 2, are all incorporated herein by reference at this point.

c. Allopathic medicine means opposing symptoms by means of drugs and surgery.

3) **The prohibition against chiropractors practicing medicine means that they may not practice medicine by using allopathic drugs or surgery with a knife**.
(See below for further discussion of the "surgery" and "drug" issues.)

**Chiropractors Shall Not be Authorized to Practice Osteopathy:**

1) The "general comment" at the start of this Part 2 is incorporated herein by this reference.
   a) The 1922 osteopathic act provided exactly the same practice rights for osteopaths as practitioners under the medical board. (See, Exhibit D.)
      1. Therefore, after 1922, the reference to osteopathy became synonymous with allopathy; except as to market identity and the regulatory board under which MDs or DOs, respectively, functioned.
   b) The chiropractic and osteopathic initiative measures were jointly promoted. (See, e.g, attached Exhibit C.)
      1. The chiropractors would not have jointly promoted their initiative with the osteopaths if they, or the osteopaths or the voters, were likely to think that chiropractors would not be allowed to use theories and practices common to each profession; as was the case with MDs and DOs.
      2. The theoretical underpinnings of both professions were derived from, or otherwise consistent with, the theory of the neurovascular (living matrix – neural), regulatory, paradigm first espoused by Claude Bernard before either the osteopathic or chiropractic profession started.
2) The fact of overlapping paradigms has three distinguishable aspects: market identity for practitioners; the right of the public to know with whom they are dealing; and practice rights.
      1. The right to a market identity is well-developed in the areas of trademarks and/or service marks and trade names or service names and those factors will be borrowed and developed in the formal presentation outlined here.
         a) Suffice it to say here that the right to protection for the brand name Sony does not preclude some other company from selling a similar line of products.
      2. The public's right to know with whom they are dealing is central to a whole area of unfair trade practices law and those factors will be borrowed and developed in the formal presentation outlined here.
         a. Suffice it to point our here that if it is important for the protection of the public that John Doe not **palm his computer off** as manufactured by say Apple, then it is more important that patients have ready access to full information about the healing arts practitioner with whom they are dealing.
            1. That does not mean, however, that the manufacturing or practice rights are thereby defined.
            2. For example, pursuant to the 1922 chiropractic ballot arguments, practitioners from 27 non-allopathic schools of medicine could become licensed as drugless practitioners and have the same practice rights. (See, Exhibit B, # 12.)
3) It is also useful to consider all of the practice rights issues, including this one, in the context of principles relating to monopolies created under patent law concepts.
   a. Laws of nature cannot be patented – the theory that the body has the innate capacity to regulate itself cannot be within the sole domain of chiropractors or osteopaths.

b. This does not, however, deprive the state of its basic power to protect its citizens from unqualified practitioners or to create a reasonable structure for the delivery of health care services.
c. Patent (monopoly) protection is only available if:
    1. The subject matter is new or novel.
        a) Bernard was there before both the osteopaths and the chiropractors.
    2. Any new development or application must **not involve** something that would have been **obvious** to people in the field.
        a. The idea of developing forms of treatment to remove and/or enhance the body's innate capacity to regulate and heal itself is an obvious development from Bernard's basic theory.
        b. Therefore, such forms of treatment cannot be exclusively within the domain of osteopathy; even in its traditional form which was essentially abandoned by osteopaths in California in 1922
        c. Nor can chiropractors be precluded from using those principles and expanding upon them based upon advances within the scientific understanding of the involved mechanisms. (See, Section F.)

.

**Summary Conclusions as to Prohibition Against Practicing Both Medicine or Osteopathy:**

1) The limitations are, in significant part, directed at clarifying the fact that chiropractors were not granted the right given to drugless practitioners to shift their license to that of a physician and surgeon.
2) The limitation is also directed at market identity issues **and** the patient's right to know. These points are well-conceptualized by the *Oosterveen* (1952) court, as follows:

> "Whenever the word "naturopathy" is used in the findings or conclusions or in the briefs, with relation to practices permitted by licensees other than naturopaths, we construe it to mean merely the employment of drugless methods commonly used by naturopaths. **Section 2137, Business and Professions Code, does not authorize physicians and surgeons to practice 'naturopathy' or any other system of drugless healing, but only to use 'any and all other methods in the treatment of diseases,' etc. The (trial) court did not hold that a chiropractor may practice naturopathy, as such, but that he may employ naturopathic methods if he so desires."** (The court of appeal upheld this holding by the trial court.)

3) The prohibitions relative to practicing medicine and/or osteopathy are directed at protecting the market identity of the respective practitioners and at the patient's right to know. These conclusions are reinforced by the provision in Section 15 of the chiropractic act which, among other things, expressly prohibits a chiropractor from:

> "using "the word "doctor," or "D.C."" without the word "chiropractor," or "D.C." immediately following his name, or the use of the letters "M.D." or the words "doctor of medicine," or the term "surgeon," or the term "physician," or the letters "D.O.," … shall be punished …."

4) The prohibitions are not directed at the scope of chiropractic practice.
    a) The scope of practice matters are covered by the specific prohibitions against chiropractors performing surgery with a knife or using allopathic drugs.
5) It is conceded that chiropractors cannot qualify to practice dentistry or optometry under their license and that they were not qualified to practice obstetrics under the curriculum established in 1922. (But see also, Section F hereof.)

6) It is also conceded that chiropractors **cannot hold themselves out as acupuncturists** even though chiropractors are entitled to practice reflex therapeutics and use modalities to affect the living matrix; even if it is hereafter established that the matrix is the same system as the meridian system.
   a) Again, the practitioners of TCM are entitled to their market identity, and
   b) The public has the right to know with whom they are dealing.

**Chiropractors Shall Not be Authorized to Practice Surgery:**

1) The "general comment" at the start of this Part 2 is incorporated herein by this reference.
2) Drugless practitioners were expressly prohibited from "severing or penetrating any of the tissues of the human body".
   a) In addition, Section 14, sub-part Ninth of the 1913 MPA expressly made the "severing or penetrating" of tissues of human beings, except for the severance of the umbilical cord, unprofessional conduct by a drugless practitioner. (See Exhibit B, # 10 & Exhibit D, § 14, Ninth marked # 2.)
      1. **This provision was expressly changed as to chiropractors**. (See, Exhibit B, # 10.)
   b) The "severing or penetrating of any of the tissues of the human body" language was also changed in Section 7 of the chiropractic act and chiropractors are prohibited from **practicing surgery**.
      1. Nonetheless, Rule 302(a)(4)(A) prohibits chiropractors from practicing surgery **or severing or penetrating tissues of human beings**.
3) There is a clear distinction between practicing surgery and:
   a) Using a needle to extract blood or perform treatment by administering some substance the chiropractor is otherwise entitled to use (e.g. a vitamin), or
   b) Using a needle for reflex therapeutic purposes.
      1. The *Chong* (1916) court recognized these conclusions.
         a. The *Chong* court, in interpreting the limitation against drugless practitioners licensed under the 1913 MPA, from severing or penetrating tissue, stated:

> "Under one form of certificate (the physicians and surgeons certificate) the holders thereof, as provided in the act, may not only prescribe and use drugs, but may also sever and penetrate **with a knife** the tissues of human beings. The holders of other certificates are drugless practitioners, and they may not prescribe or use drugs, **nor may they operate with a knife or in <u>that</u> way sever or penetrate the tissues of human beings**, except that they may sever the umbilical cord." (Emphasis added.)

4) It is equally important for the BCE to recognize that the mere fact that chiropractors were not precluded from using needles by the 1922 act does not mean that individual chiropractors are necessarily presently qualified to do so. (See, Section F, Part 2 and Conclusions.)
5) Again, the "surgery" limitation is, in significant part, directed at clarifying the fact that chiropractors were not granted the right given to drugless practitioners to shift their license to that of a physician and surgeon.
6) **The BCE should conclude that**:
   a) chiropractors are authorized to use needles under the provisions of the 1922 act and/or based upon the electives as addressed below, but
   b) The BCE should thereafter (and separately from the procedure related to this presentation**) establish reasonable standards for particular chiropractors to actually use needles**. (See, Section F.)

**Chiropractors Shall Not be Authorized to Use Any Drug or Medicine Now or Hereafter in Materia Medica:**

1) The expression "drug in materia medica" must be read as a whole. It is not sufficient that something be a drug, it must also be in the referenced materia medica and, equally so, not everything in materi medica is covered, it must also be a "drug".
2) The statutory history prior to 1913 is important to understanding what was meant by the prohibition against chiropractors using drugs in materia medica.
    a) The words "materia medica" appeared in the state medical practice acts for the first time in 1901 and this is a critical starting point.
        1. An official state board was established (for the first time) that had five members elected by the Medical Society of the State of California, two members elected by the California Homeopathic Medical Society, and two members elected by the Eclectic Medical Society of the State of California (primarily herbal practitioners).
        2. If an applicant applied to be examined "in materia medica and therapeutics…" he/she was required to designate in "what school of medicine he desires to practice", and
            a. "only the member or members of the board who belong to the school so designated shall participate in this part of the examination."
        3. Obviously, there was more than one recognized materia medica in the era leading up to the enactment of the chiropractic act.
3) The 1907 MPA did not provide for any examination in "materia medica" (or make any reference to those words).
    a) The specified examination was to be "on the following fundamental subjects, to wit: Anatomy, histology, gynecology, pathology, bacteriology, chemistry and toxicology, physiology, obstetrics general diagnosis, (and) hygiene."
4) The 1909 amendment to the 1907 act allowed licensure by persons who then held an unrevoked certificate from the Association of Naturopaths of California (ANC) founded in 1904. (See, Section, Part 4(1).) The articles of this association defined the naturopathic "materia medica" to include:

    "Light, Air, Water, Clay, Heat, besides; Exercise, Rest, Non-stimulating Diet, Herbs, Electricity, Massage, Swedish Movements, Suggestive Therapeutics, Chiro-Practic, Magnetism, Physical and Mental Culture etc. etc."

    a) The court in the *Millsap* (1924) case accepted this definition of the materia medica.
    b) This definition was also accepted in the *Oosterveen* (1952) case which recognized the right of chiropractors to utilize naturopathic methods of healing if approved by the BCE.
        1. Apparently such approval was based upon demonstration of appropriate qualifications as the court pointed out that only about 20% of the then practicing chiropractors were so approved by the BCE.
    c) The foregoing ANC/*Millsap* definition does not directly refer to homeopathic remedies.
        1. Therefore, the question arises as to whether homeopathics were, prior to 1922, recognized as not being the same as, or part of, the allopathic materia medica. Or, otherwise stated, whether they were part of the natural materia medica.
        2. Books have been written about the differences between these respective materia medica.
        3. The best exposition of the conflict over the allopathic materia medica versus the homeopathic materia medica is by Harris Coulter.[2] (Coulter, Divided Legacy, The

[2] It should be remembered that the issue to be decided is whether chiropractors are precluded from using homeopathic remedies, **not their scientific merit**. In the latter context, several points should be made: 1) a 1993 study by the National Board of Chiropractic Examiners showed that approximately 43% of California chiropractors were then using homeopathic remedies; 2) the new California Naturopathic Doctors Act enacted in 2003 expressly authorizes naturopaths to use homeopathic remedies (Bus. &

Conflict Between Homeopathy and the American Medical Association (2d ed, 1982). A copy of this book will be included in its entirety with the formal presentation outlined here.)

4. Dr. Henry Lindlahr is often credited by being the founder of "scientific naturopathy". (Evidence to support this statement will also be included with the formal presentation.)
   a. Dr. Lindlahr operated a natural healing school in Chicago in affiliation with Dr. Howard after Howard left NCC in 1919.
   b. The school founded by Henry Lindlahr was taken over by his son (Dr. Victor Lindlahr) and merged with NCC in 1924.
   c. Victor Lindlahr then became a teacher of Lindlahr's methods at NCC and he was also a visiting lecturer at LACC and ultimately a professor at LACC.
      1) Henry Lindlahr wrote a treatise on the "Philosophy of Natural Therapeutics" which went through more than 25 editions. (After the death of Henry Lindlahr, later publications were edited by Victor Lindlahr.)
      2) Chapter xxv of the Lindlahr text (published in 1922) is titled "Homeopathy" and it clearly demonstrates the use of homeopathic remedies to have been within the context of natural healing as espoused at both NCC and LACC in this era.

5) The 1910 Flexner Report makes specific reference to "materia medica" and cites two articles addressing that subject which are helpful to an understanding of the use of that term in the context of allopathic medicine:

   Abel, J.J.: *On Teaching of Pharmacology, Materia Medica, and Therapeutics*, Phila. Med. J, Sept. 1900.
   Sollman, R.: *The Teaching of Therapeutics and Pharmacology from the Experimental Standpoint*, Jour. Med. Assoc., Sept. 6, 1902.

   a) The Sollman article clearly draws a distinction drawn between the "materia medica comprising organic and inorganic drugs…" and herbal medicines.
   b) Sollman also points out that teaching samples of the **drug materia medica** are kept in bottles marked: "'**Strong Poison**, Do Not Taste,' printed on red paper, '**Poison**, Taste Cautiously,' printed of blue paper, or '**Practically Harmless**,' printed on green paper."
      1. It should be remembered at this point that Dr. Howard, the founder of NCC, taught, among other things, the use of "**non-poisonous** botanical remedies". (See, Section C, Part 3(4).)
      2. Homeopathic remedies are non-poisonous substances.

6) Again, this "drug" limitation is, in significant part, directed at clarifying the fact that chiropractors were not granted the right given to drugless practitioners to shift their license to that of a physician and surgeon.
   a) Therefore, the content of the course in the "materia medica" prescribed for the unlimited license is important to understanding the limitation relative to the use of drugs in materia medica.
      1. The BCE has subpoena power to obtain additional information from the medical board about the contents of the materia medica course as taught under the 1913 act.
   b) The materia medica reference is directed at the allopathic materia medica, and

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Prof. Code, § 3640(c)1); 3) The concepts of structured or organized water discussed in Oschman's book provide basic scientific support for the possible mechanism(s) of action of homeopathic remedies. (See, Section D, Part 1(2). Also, the book Bellavite & Signorini, Homeopathy, A Frontier in Medical Science (1995) is very useful in this regard and a copy will be supplied for inspection by the BCE with the formal presentation.

**c)** In any event, the limitation does not preclude the use of substances within the naturopathic materia medica, including homeopathic remedies.

d) **Chiropractors are authorized to use the entire natural medicine materia medica to "treat diseases, injuries, deformities or other physical or mental conditions.**

e) The BCE should (separately from the initial determination of the scope of practice) **establish such education and training standards as may be reasonably necessary** for chiropractors to actually use specific substances and/or modalities within the natural medicine materia medica.

a. Obviously, with input from all interested parties and based upon the expertise of educators in the field of natural medicine and physiological therapeutics and/or functional medicine.

## F. ANALYSIS OF THE SCOPE OF PRACTICE BASED UPON ADVANCES IN THE BASIC & CLINICAL SCIENCES & MANDATED ELECTIVES

**Notes:**

It must be remembered that **Section 16 prohibits the chiropractic act from being interpreted so as to discriminate against any "particular school of chiropractic, or any treatment"**.

The fact that the scope of practice includes theories and practices that go beyond the joint adjustment process **does not mean** that individual chiropractors, or specific chiropractic colleges, may not choose to specialize in that particular tradition.

Once the BCE recognizes that chiropractors have broader practice rights than presently provided, it will thereafter have the duty to determine if, and to what extent, chiropractors have, since the narrowing of the chiropractic scope of practice, been adequately trained to practice within the broader paradigm. If they have not, the BCE has the duty to then further delineate reasonable elective education and training to enable individual chiropractors to become properly prepared to practice within the broader scope of practice.

### **Part 1:** CHIROPRACTIC HAS THE RIGHT TO ADVANCE AS A HEALING ART

1) It is clear that "Chiropractic is not a static system of healing and it may advance and change in technique, teaching, learning, and mode of treatment …." (*Crees* case)

a) But this right only relates to emerging science and forms of diagnosis and treatment within the theoretical and clinical framework of the drugless practitioner concept and the respective "schools of chiropractic" that existed prior to the 1922 era.

1. This would include the broad scope of practice established by the leadership at LACC and NCC as addressed herein and the other persons specifically referred to in the preceding outline, including Claude Bernard, D.D. Palmer, Carl Schultz, Shelby Riley, George Starr White and Terrence Bennett. It would also, of course, include the straight chiropractic school of chiropractic espoused by B.J. Palmer and Ratledge.
2. Many additional persons and early institutions could be added but these persons and schools adequately demonstrate the basic theories and practices within the overall profession as it existed prior to 1922.

c) Indeed, the chiropractic profession has a duty to advance as basic science and clinical and technological knowledge and experience expands, because:

1. Basic science and clinical practice are, by definition, expanding fields.
2. Holdings and the reasoning in the *Hunt* (1948) case support this position as outlined below.
3. Only by the BCE recognizing that chiropractors have a right and duty to keep abreast of the unfolding science and diagnostic and treatment opportunities can California patients have the opportunity to choose their own form of care and obtain the services that California have repeatedly voted for from chiropractors.

2) A primary focus in this outline has been on the neurovascular, pathophysiological (regulatory), theory first developed by Claude Bernard in the same era that Virchow announced the theory that has been followed by allopathic medicine. (See, Section C, Part 2.)
   a) The outlined data demonstrate that Bernard's model was the basis of, or at least consistent with, the original chiropractic theory first espoused by D.D. Palmer. (See, Section C, Part 3.)
   b) The data also show that this model was, before the end of the 1922 era, expanded upon in the "physiological therapeutics" model of, among others, Howard and the reflex therapeutics model of Riley, Starr and Bennett. (See, Section C, Parts 3 & 4.)
   c) Significant advances have taken place in these perspectives from both a basic science and clinical perspective and those advances are resulting in a wide variety of healing approaches in Europe under the term "functional medicine". (See, Section D, Parts 1 & 2.)
      1. The schools of thought espoused prior to 1922 at NCC, and the naturopathic practitioners affiliated with LACC, included the use of herbs, homeopathics and a wide variety of physical agents for the treatment of the sick and afflicted.
      2. Much more could be said about advances in the use of such substances and modalities, but that is not necessary at this time.
         a. However, it must be recognized that great advances have taken place in recent years in the areas of nutritional, herbal and other forms of natural medicine in addition to the advances in functional medicine theories and clinical practices referred to herein.
         b. All of these advances should become a focus of attention after the scope of practice has been recognized as going beyond joint adjustment and adjunctive services.

**PART 2:** PRACTICE RIGHTS BASED UPON AN EXPANDING KNOWLEDGE BASE and MANDATED ELECTIVES

1. As previously established, there is a direct relationship between the education and training prescribed in Section 5 of the chiropractic act and the practice rights of chiropractors.
2. The history of educational movements, BCE, legislative and judicial action throughout this period of time is critical to understanding the present significance of the electives prescribed and mandated by the 1976/78 amendments to the chiropractic act.
3. From at least 1922 to 1948 there was an ongoing effort by the leadership of LACC, and the schools that merged with it, to increase and enhance the standard chiropractic curriculum offered by California chiropractic schools.
4. Throughout the period of time and until the rulings in the *Hunt* (1948) case addressed below, the straights opposed any increases in the prescribed curriculum.
5. In interpreting the 1948, 1970 and 1976/78 amendments to act, the BCE must consider the original intent of the act and the history outlined below.

**Legislative Action in the Period from 1939 to 1949:**

1. Medical practice issues have become hot legislative and judicial issues during several periods of time within the history of California. The period from 1939 to 1952 was one such period of time and we are presently in another such period of time.
2. In 1939 the Legislature increased the prescribed curriculum requirements for a drugless practitioner's license from 2000 hours to 3600 hours.
   a) In 1943 the Legislature caused the repeal of osteopathic board's authority to issue drugless practitioners licenses.
3. In 1945 the Legislature enacted Business and Professions Code Section 1001 as part of the laws regulating chiropractic. This law provided that the BCE must publish a "directory" that would among other things, list all persons holding:

"unforfeited and unrevoked certificates to practice chiropractic, and whose certificate in any manner authorizes the treatment of human beings for **diseases, injuries, deformities, or any other physical or mental conditions (sic)."**

a) This is the same language as that defining the drugless practitioner's scope of practice under the 1913 MPA, and as amended to 1939.[3]
b) Although this appears to be an unenforceable law, it is significant evidence that the legislature was, in this period of time, acting on the belief that chiropractors had the same basic scope of practice as did drugless practitioners.

4) In 1948 the Legislature caused an amendment to be placed on the November ballot increasing the prescribed hours for the chiropractic license from 2400 hours to 4000 hours. (See details below.)
1) In 1949, and after the voters had approved the 1948 amendment to the chiropractic act, the Legislature repealed the authority of the medical board to issues drugless practitioner licenses.
2) The foregoing cannot be properly understood without also looking at the history of BCE action during this period of time and the outcome of litigation prompted by that BCE action.
   a) We will reconsider the significance of the referenced legislative history after looking at the BCE and Judicial action connected with the foregoing.

**BCE Action and Related Litigation During the Period from 1945 to 1952:**

1) In 1944, the BCE adopted a regulation increasing the required hours for a chiropractic license from 2400 to 4000 hours.
   a) The regulation was immediately challenged in three separate legal actions.
      1. The primary legal action was brought by the "Ratledge School" and sought a judicial declaration that the BCE did not have the power to increase the prescribed educational requirements. (The three cases were consolidated and they are reported as *Hunt v. Board of Chiropractic Examiners* (1948).)
      2. The **trial court** agreed and declared, among other things, that the BCE did not have the right to increase the required education.
         a. It appears clear that this ruling prompted the Legislature to place the amendment increasing the prescribed curriculum on the November 1948 ballot.
         b. The *Hunt* case is important, however, for not only having prompted the 1948 amendment to resolve the prescribed curriculum issue, but also for its holdings and reasoning. The *Hunt* court, on August 4, 1948 reversed the trial court rulings stating[4]:

> "The statute (chiropractic act) prescribes a schedule of "minimum" educational requirements prerequisite to examination for license to practice covering 2,400 academic hours. This was enacted in 1922. The appellant board, in 1944, by rule increased the required number of academic hours to 4,000**. It is hardly necessary to allude to the great number of changes and improvements that have been made in the healing arts during this period of 22 years**. It can not be argued that the appellant board acted arbitrarily or unreasonably in demanding this additional education. To the contrary, it would be more reasonable to say that it would have been deficient in its duties as an agency concerned with the public health and welfare if it had neglected to so act.

[3] This statute appears to have not been submitted to the voters and it is, therefore, unenforceable as the legislature is not entitled to amend the chiropractic act without voter approval.
[4] The *Hunt* decision came after the legislative action to place the issue on the ballot, but before the voters approved the amendment in November, 1948

> It is a fair and reasonable interpretation of **the statute that it was intended to permit the board to take cognizance of these conditions so as to provide more efficient treatment of the sick**, and that it was with such purpose in view that **the statute** fixed the 'minimum' requirements and **gave to the board the power** to enact rules 'proper and necessary for the performance of its work.' … in fixing a 'minimum' schedule … it was left open to the board **to require additional instruction either in the same subjects of study specified in the statute or in new or additional subjects as the board might determine.**" (Emphasis added.)

4) This decision is important for its specific language, but it is also additional confirmation of the fact that in this era the legislative and judicial perspective was that chiropractors had a broad role to play in the health care delivery system. This perspective should guide the BCE's consideration of the amendments being addressed here.

a) It is particularly important to correlate the outcome and language of the *Hunt* case with the general history of legislative action during this period of time.

b) This is especially true because the legislature, in 1949, repealed the right of the medical board to issue drugless practitioner's certificates.
   1. The manifest legislative intent was that chiropractors would fully occupy the field of drugless practice after 1948.
   2. This conclusion becomes even more compelling when it is recognized that the 1948 amendment granted to BCE the discretion to allow for up to 17% of the 4000 hours to be in electives.
      a. This, at least theoretically, enabled the BCE to guide the profession in advancing to keep abreast of expanding basic science and clinical knowledge. Without electives, chiropractors would arguably have to go back to the voters each time they wanted to keep their education, training and practice opportunities abreast of changes within the emerging basic and clinical sciences.
         1) At least this was true before the *Hunt* decision.

c) Further insight into the perspective in this era is to be derived from the *Oosterveen* (1952) case where the court indicated that as of the trial in that case (no later than 1951) there were:

> "It was stipulated that there are 13 naturopaths' licenses issued by the Medical Board, 129 drugless practitioners' licenses issued by the Medical Board and 179 by the Osteopathic Board; also that there are some 5,600 chiropractors in the State of California. The court found that naturopathy is practiced in California by more than 1,000 persons, almost all of whom are licensed chiropractors who practice chiropractic and who have displayed somewhere within their offices a certificate or degree of Doctor of Naturopathy." (Elsewhere the court points out that this displaying of the degree was monitored by the BCE.)

**Consideration of Amendments Relative to Chiropractic Elective Education & Training:**

1) The Legislature, in 1948, 1970, 1976/78 placed amendments of the chiropractic act before the voters that are important to the rights of chiropractors to advance the profession through elective education and training.
2) It is important to consider these amendments in sequence and in the overall context of this entire outline, but especially that presented in this Section.

**The 1948 Amendment:**

1) As previously indicated, this amendment increased the prescribed curriculum hours from 2400 to 4000.
2) The amendment also provided for up to "17%" electives.
   a) Clearly, the electives were discretionary and the BCE and the profession had the right to simply ignore them. They did so.
   b) Even though the electives were only discretionary, a ballot argument was submitted opposing the provision for electives. The opposition argument stated, in part:

      "Any part of 17% of four thousand hours or 680 elective study hours could be used to teach medicine, surgery and/or obstetrics. There is no provision to prevent the 5000 Chiropractors, now licensed, (without training in such subjects) from practicing in these fields." (The parenthetical expression is part of the original.)

      1. This argument draws several false and unwarranted conclusions:
         a) There is nothing in the ballot measure that states, or implies, that just because the provision for electives may create a potential for expanded rights that all chiropractors would benefit from that potential; especially that they could do so without completing elective education and training.
            1. The issue was then, and still, of serious concern.
            2. The issue will be further addressed under the 1970 and subsequent amendments.
         b) Nothing in the ballot suggests that the elective provision could eliminate the express provision prohibiting the practice of "surgery" or "medicine" (at least in the context of allopathy).
            1. The conclusion that chiropractors (with or without the training) would be authorized to practice "medicine" is equally invalid if by that it is meant that chiropractors would be entitled thereby to use allopathic drugs.
         c) The obstetrics issue poses a more difficult question.
            1. Obstetrics is not expressly prohibited by the 1922 act.
            2. However, the ballot arguments informed the 1922 voters that chiropractors would not be authorized to practice obstetrics. There was an obvious rationale for this.
               a. Drugless practitioners were prescribed to take 265 hours in ob-gyn and chiropractors only 100 hours. (See, Exhibit F.)
               b. The representation to the voters should be given significant weight in considering this issue.
               c. However, the rationale changes if an adequate elective program in this field is defined by the BCE and put into place by one or more schools.
               d. The issue will be left open here as the specific rights attendant upon completion of elective education and training should only be addressed after the right of the BCE to establish such rights has been first recognized by the BCE.

**The 1970 Amendment:**

1) Prior to 1970, Section 4 of the 1922 act provided that the BCE had the "the power to enact rules 'proper and necessary for the performance of its work.'"
2) The "proper and necessary" language leaves open a critical question:
   a) Did the BCE have the jurisdiction to adopt rules as needed for the protection of the public from chiropractors practicing within areas for which they have not been properly trained?

3) Irrespective of the merit of that question, it was clearly answered by the amendment placed on the ballot by the Legislature, and approved by the people, in 1970. The BCE has the right to adopt regulations **filling in the details** as to the elective education and training provided by Section 5 of the chiropractic act and as needed for the protection of the public.
   a) In addition, administrative agencies are generally recognized as having the implied power to use their expertise to **fill in the details** of the provisions of their enabling statute which are often granted in broad terms.
   b) That is the case here. The elective curricula has only been expressed in terms of total hours as opposed to established minimum standards for specific subject areas.

**The 1976/78 Amendments:**

1) These two amendments are to be read together as the 1978 amendment merely reiterated the provision relevant here and then added some language to clarify other provisions of the 1976 amendment.
2) These amendments changed the electives from a discretionary 17% to a required 15%. (See, Exhibit G.)
   a) The language of the elective provision is phrased in terms of "shall". Shall is a word that, except for very unusual circumstances not present here, conveys mandated action.
   b) The *Tain* (appellate) court correctly held the electives are mandatory under the referenced amendments.
      1. The *Tain* trial court ruled in favor of the position taken by the Attorney General's, Office purportedly on behalf of the BCE, that the 1976/78 elective provision continued the electives as only discretionary.[5]
   c) Actually, the BCE's own regulation confirms the mandatory nature of the electives, as follows:

      "331.12.2 CURRICULUM

      All applicants for licensure shall be required to comply with this section in order to qualify for a California chiropractic license.

      (b) Required Hours and Subjects: …. The course of instruction completed by the applicant shall consist of no less than the following minimum hours, except as otherwise provided:

      ….

      Electives 660 Hours

      (d) Additional Hours and Subjects: It is recommended that a school offer elective subjects, including chiropractic meridian therapy, counseling, hypnotherapy and biofeedback. The school may offer and require for graduation courses of more than 4000 hours."
   d) The language in sub-part (d) seems to suggest that the electives are discretionary. That is simply incompatible with the language of the 1976/78 amendments as can be seen by looking at the underlined portions of the amendments on Exhibit G. Actually, however, sub-part (d) should be read to mean that the electives are mandatory, but that the BCE is "recommending" the specifically listed areas of study.

[5] Interestingly, the appellate court did not acknowledge that it was reversing the trial court ruling on this point. It simply did it.

e) However, the whole structure of the 1922 act and subsequent amendments, indeed the whole regulatory structure of medical licensing since 1913, is based upon the **State**, or the state agency, establishing the minimum standards for the right to practice.
   1. The fact that the electives are not specifically defined in the amendments manifests the obvious intent that it was expected that **the board would fill in the details as to subject areas to be covered and the minimum standards related to those subjects.**
      a. Of course, if the act specifically delineated the courses they would no longer be electives.
   2. The BCE must do more than merely recommend some subjects areas for the electives.
      a. The BCE has the right and the duty to establish a comprehensive schedule of subjects and the required hours (didactic and clinical) for the electives.
      a. The content and method for presenting the material would then fall into the hands of the institutions to offer such education and training.
      b. Obviously, subject areas could, and should, be added from time to time based upon advancing knowledge in the basic and clinical sciences.
      c. "Interested persons" would, under existing law, have the right to initiate action by the BCE for inclusion of particular subjects and courses for the electives. (Govt. Code, § 11340.6)

## CONCLUSIONS

PHASE ONE:

1) The BCE must, under the circumstances outlined here, reconsider and re-define the original intent as to the chiropractic scope of practice under the 1922 act and subsequent amendments.
2) In re-defining the scope of practice under the 1922 act the BCE must:
   a) Recognize that Section 7 of the act must be read together with all other provisions of the chiropractic act as presented to the voters on the 1922 ballot, including section 5 of the act, and in the entire legal and historical context in which the voters approved the act.
   b) Recognize that its interpretation must not discriminate against any particular school of chiropractic, or any other treatment. (See, Exhibit B, § 16.)
   c) In re-defining the chiropractic scope of practice the BCE should conclude that:
      1. Chiropractors were, under the 1922 Chiropractic Initiative Act, intended to have the right to diagnose and treat diseases, injuries, deformities, or other physical or mental conditions, except by the use of allopathic drugs or surgery with a knife.
      2. The limitation as to the use of "allopathic drugs" does not preclude chiropractors from using, without limitation, the following:
         Herbs, homeopathic remedies, nutritional and other substances and things derived from botanical, mineral or animal sources, plus air, water, clay, heat, sound, light, electricity, magnetism, physical movement therapies, massage, suggestive therapeutics and rest.
      3. The limitation as to surgery does not preclude chiropractors from using needles for diagnostic or therapeutic purposes so long as such use is otherwise consisting with their scope of practice as herein defined.
3) In re-defining the chiropractic scope of practice the BCE should specifically acknowledge that the defined scope of practice is consistent with the original intent of the electorate in 1922 because:
   a) **Alternative one**: The voters intended chiropractors to have the same basic practice right as did drugless practitioners under the 1913 MPA and the 1922 osteopathic act.
      1. But that, the limitations on that basic right were more carefully crafted in the chiropractic act so as to only include the stated limitations.

b) **Alternative (and complimentary) two**: The voters intended chiropractors to have the right to practice within the theories and clinical practices of all schools of chiropractic that existed in the 1922 era and those theories and practices included the use of all substances, methods and procedures except the use of allopathic drugs or surgery with a knife.

4) In interpreting the provisions for elective education and training in the amendments to the chiropractic act the BCE should:
   a) Read and consider the amendments in a manner consistent with the original intent of the 1922 act;
   b) Recognize that many aspects of particular schools of chiropractic that existed prior to 1922, including, **but not limited to**, physiological, naturopathic and reflex therapeutics have significantly advanced since 1922;
   c) Recognize that it has the right and duty to define the minimum standards for the basic subject areas of the elective curriculum; and
   d) Establish reasonable minimum standards for chiropractors to practice within the diagnostic and clinical opportunities available based upon advances within the basic and clinical sciences related to all particular schools of chiropractic that existed prior to 1922 and other forms of treatment not expressly prohibited as to chiropractors. (See "Phase Two".)

PHASE TWO:

1) In a separate and subsequent administrative process, the BCE should undertake to:
   a) Specifically define the minimum standards for the elective curriculum
   b) Determine and establish standards that are necessary for persons to actually practice in a manner beyond the limits of the scope of practice defined in Rule 302.
   c) "Interested persons" (including the schools) have the statutory right to initiate consideration of these matters. (Bus. & Prof. Code, § 11340.6)
2) In so doing, the BCE must recognize that the standards must be reasonable and as needed for the protection of the public.

Dated: RESPECTFULLY SUBMITTED

_____

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Consulting services and fees

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| 04/15/02 | Phone tc. Prescott | 0.40 | | 140.00 |
| 04/18/02 | Phone to Prescott | 0.50 | 3.00 | 178.00 |
| 04/18/02 | e-mail to Johnson (CA State Archives) | 0.20 | | 70.00 |
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Respectfully,

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95-4121325